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February 20, 2009

**DECISION AND ORDER
OFFICE OF HEARINGS AND APPEALS**

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: September 17, 2008

Case Number: TSO-0678

This Decision concerns the eligibility of XXXXXXXXXX (hereinafter referred to as "the individual") to hold an access authorization¹ (or "security clearance") under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." As set forth below, it is my decision, based on the evidence and testimony presented in this proceeding, that the individual's access authorization should not be granted at this time.

I. Background

The individual is employed by a Department of Energy (DOE) contractor in a position that requires her to hold a security clearance. In July 2007, the individual submitted a request for a security clearance and, shortly thereafter, the Office of Personnel Management (OPM) began an investigation into the individual's background. In order to resolve questions arising from the OPM investigation, the local DOE security office (LSO) conducted a Personnel Security Interview (PSI or Exhibit (Ex.) 11) with the individual in April 2008. The PSI did not resolve the concern and the LSO referred the individual to a DOE consultant-psychiatrist (DOE psychiatrist) for a psychiatric examination. The DOE psychiatrist examined the individual in June 2008, and memorialized his findings in a report (Report or Ex. 6). Based on his findings, the DOE psychiatrist diagnosed the individual as suffering from alcohol abuse disorder and using alcohol habitually to excess, and without adequate evidence of rehabilitation or reformation.

On August 5, 2008, the LSO sent a letter (Notification Letter) advising the individual that it possessed reliable information that created a substantial doubt regarding her eligibility to hold a security clearance. In an attachment to the Notification Letter, the LSO explained that the derogatory information fell within the purview of one potentially disqualifying criterion set forth

¹ Access authorization is defined as "an administrative determination that an individual is eligible for access to classified matter or is eligible for access to, or control over, special nuclear material." 10 C.F.R. § 710.5(a).

in the security regulations at 10 C.F.R. § 710.8, subsection (j) (hereinafter referred to as Criterion J).²

Upon receipt of the Notification Letter, the individual exercised her right under the Part 710 regulations by requesting an administrative review hearing. On September 17, 2008, the Director of the Office of Hearings and Appeals (OHA) appointed me the Hearing Officer in this case. At the hearing, five witnesses testified. The DOE psychiatrist testified on behalf of the agency. The individual testified on her own behalf and also called her parents and cousin as witnesses. In addition to the testimonial evidence, the DOE submitted 12 exhibits into the record. The transcript taken at the hearing shall be hereinafter cited as “Tr.” Various documents that were submitted by the DOE counsel during this proceeding constitute exhibits to the hearing transcript and shall be cited as “Ex.”

II. Analysis

The applicable regulations state that “[t]he decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all relevant information, favorable or unfavorable, as to whether the granting of access authorization would not endanger the common defense and security and would be clearly consistent with the national interest.” 10 C.F.R. § 710.7(a). Although it is impossible to predict with absolute certainty an individual’s future behavior, as the Hearing Officer I am directed to make a predictive assessment. There is a strong presumption against the granting or restoring of a security clearance. *See Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) (“clearly consistent with the national interest” standard for the granting of security clearances indicates “that security determinations should err, if they must, on the side of denials”); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991) (strong presumption against the issuance of a security clearance).

I have thoroughly considered the record of this proceeding, including the submissions of the parties, the evidence presented and the testimony of the witnesses at the hearing convened in this matter. In resolving the question of the individual’s eligibility for access authorization, I have been guided by the applicable factors prescribed in 10 C.F.R. § 710.7(c): the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, to include knowledgeable participation; the frequency and recency of the conduct; the age and maturity of the individual at the time of the conduct; the voluntariness of the participation; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the motivation for the conduct; the potential for pressure, coercion, exploitation, or duress; the likelihood of continuance or recurrence; and other relevant and material factors.

After due deliberation, it is my opinion that the individual’s access authorization should not be granted at this time because I cannot conclude that granting the access authorization would not endanger the common defense and security and would be clearly consistent with the national

² Criterion J relates to information that a person has “[b]een, or is, a user of alcohol habitually to excess, or has been diagnosed by a psychiatrist or a licensed clinical psychologist as alcohol dependent or as suffering from alcohol abuse.” 10 C.F.R. § 710.8(j).

interest. 10 C.F.R. § 710.27(a). The specific findings that I make in support of this determination are discussed below.

A. Findings of Fact

The individual first consumed alcohol at age 18. PSI at 31. She drank two to three wine coolers on the rare occasions when she attended a party. *Id.* However, as she got older and went out more, she also began to drink more alcohol, consuming four drinks in four hours every other weekend. *Id.* at 32.

The individual's first alcohol-related incident occurred on December 31, 2002, at the age of 19. The individual consumed three mixed drinks in two hours at a friend's house, and then accompanied that friend to a New Year's Eve fraternity party. PSI at 23. There the individual drank more alcohol, but could not remember the exact amount. *Id.* at 25. Someone found the individual intoxicated in an alley and called the police to assist her. *Id.* at 22-25; Ex. 4. The individual believes that she had a blackout on this occasion because she does not recall what happened. PSI at 27-28. The individual remembers waking up in a hospital emergency room, where hospital personnel determined that she had been raped. *Id.* at 21, 27-29. She stayed in the hospital for five days but refused counseling about the rape. *Id.* at 29. She did, however, admit that she was intoxicated. *Id.* at 29. Even though she had experienced two or three blackouts in one year, she did not think she had a problem with alcohol. *Id.* at 19.

The second alcohol-related incident occurred in March 2003 when the individual was 20 years old. She was sitting in a parked vehicle with friends when someone handed a bottle into the truck in which she was riding. *Id.* at 4, 30. The bottle fell, drawing the attention of police who then cited the individual and her friends for Underage Possession of Alcohol. Tr. at 17; Ex. 5. She went to court for the citation, and the charge was dismissed. The individual continued to drink alcohol on two weekends a month.

Between September 2005 and April 2007, the individual drank to intoxication approximately six times. PSI at 34-37; Report at 1, 4, 9. She went out every weekend and would consume up to seven drinks in four hours. PSI at 36. In September 2007, she began drinking more while living with a roommate who drank heavily. Tr. at 18.

The third alcohol-related incident occurred in December 2007. The individual attended a birthday party at a restaurant and consumed two large martinis in one hour. PSI at 16. She did not feel intoxicated at the restaurant. *Id.* The police stopped her at a sobriety checkpoint while she was driving home, gave her sobriety tests, and then charged her with Aggravated Driving While Intoxicated (Aggravated DWI). Ex. 8. She registered 0.18 on the breathalyzer test, well over the legal limit. PSI at 15; Ex. 8. She was in a holding cell for 24 hours until her parents came to pick her up. PSI at 19. The court recommended 24 hours of community service, attendance at a victim impact panel, and DWI school. Her license was suspended and an interlock was installed on her car, disabling the car if she registered a blood alcohol level of .025. *Id.* at 23. She paid a fine and was placed on probation until June 2009. *Id.* at 25. While on probation, she was prohibited from drinking alcohol or from spending time at a bar.

In January 2008, the individual moved in with her parents. She also voluntarily sought counseling through her employer. Report at 6. In January 2008, the facility Employee Assistance Program (EAP) counselor recommended that the individual see an alcohol counselor. Tr. at 32-33. In order to resolve questions arising from the alcohol-related arrest and other derogatory information, the LSO conducted a PSI with the individual in April 2008. During the PSI, the individual agreed to a referral to a DOE psychiatrist for a psychiatric examination. *Id.* at 55-56.

The DOE psychiatrist examined the individual in June 2008. Ex. 7 at 1. The psychiatrist diagnosed the individual with alcohol abuse, with no evidence of rehabilitation or reformation. *Id.* at 8-11. The doctor also indicated that for most of the two years prior to her DWI, the individual was a user of alcohol habitually to excess. *Id.* He administered laboratory tests for drugs and alcohol, and the results were consistent with her assertion that she abstained from alcohol since December 2007. In order to demonstrate reformation from alcohol abuse, the DOE psychiatrist recommended that the individual first have a desire to enter treatment. If she chose treatment, the psychiatrist recommended weekly individual counseling or self-help groups like AA for one year, and one year of abstinence. *Id.* at 10-11. The individual began sessions with an alcohol counselor in August 2008. Tr. at 76. However, in October 2008, the individual went to a bar with her cousin and drank half of a beer. *Id.* at 53-33.

B. DOE's Security Concerns

As previously noted, the LSO cites Criterion J in the Notification Letter. With regard to Criterion J, the LSO relies on the DOE psychiatrist's opinion that the individual suffered from alcohol abuse. In support of its position, the DOE cites: (1) the individual's intoxication and blackout in January 2003; (2) the individual's excessive drinking from 2005 to 2007; (3) the individual's association with a roommate in October 2007 that led to heavy drinking and a DWI arrest in December 2007; and (4) the individual's continued consumption of alcohol that resulted in her rape in January 2003, a citation for underage drinking in March 2003 and her arrest for Aggravated DWI in December 2007. Ex. 1.

I find that the information set forth above constitutes derogatory information that raises questions about the individual's alcohol use under Criterion J. The excessive consumption of alcohol is a security concern because that behavior can lead to the exercise of questionable judgment and the failure to control impulses, which in turn can raise questions about a person's reliability and trustworthiness. See Guideline G of the *Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* issued on December 29, 2005, by the Assistant to the President for National Security Affairs, The White House. The excessive use of alcohol also raises a security concern because of its intoxicating effect. "Because the use of alcohol at the very least has the potential to impair a user's judgment and reliability, individuals who use alcohol to excess may be susceptible to being coerced or exploited to reveal classified matters. These security concerns are indeed important and have been recognized by a number of Hearing Officers in similar cases." *Personnel Security Hearing*, Case No. VSO-0417, (May 21, 2001).

C. Hearing Testimony

1. The Individual

The individual testified that she has worked for the contractor for 16 months. Tr. at 14. At the hearing, she described how she began drinking two to three wine coolers as a teenager but as she got older and went out more, she drank more. *Id.* at 16. On New Year's Eve in 2002, she consumed two or three mixed drinks at a friend's house prior to leaving for a fraternity party. *Id.* at 18. She does not remember what she drank after that, and had a blackout. Tr. at 18-19. The individual admitted that she had two or three alcoholic blackouts in a year, but did not think she had a problem with alcohol at that time. *Id.* at 20. She discussed the underage possession citation, her first alcohol-related legal incident that occurred in March 2003 when she was 20. Ex. 5. According to the individual, she was on her way to a party with friends. Tr. at 17. They were seated in two vehicles, and someone handed a bottle of alcohol out of one car to the other. The bottle fell, and a policeman in the parking lot saw the alcohol. He gave the individual a citation for underage possession of alcohol. *Id.* at 17. Nonetheless, she continued drinking two weekends a month. *Id.* at 18.

Her heaviest drinking occurred in late 2007 when she was living with a friend who drank heavily, and at that time she did not think she had a problem with alcohol. Tr. at 18. She drank two weekends per month and did not think she had a problem until her arrest for DWI. *Id.* at 18, 29. According to the individual, her last drink was in December 2007, the night of her DWI arrest. She had to pay a fine, do 24 hours of community service, attend a victim impact panel, attend DWI school and counseling, and install an interlock on her car. *Id.* at 22-24. She has never triggered the interlock device with alcohol use. *Id.* at 23-24.

The individual is on probation until June 2009. *Id.* at 25. She does not drink when others do, although her current roommate drinks alcohol and some people still ask her to drink with them. Even though the alcohol counselor suggested that she attend Alcoholics Anonymous (AA) to show her probation officer that the individual did more than attend court-ordered counseling, the individual has not attended AA because of her schedule. *Id.* at 38. The counselor left the decision to attend AA with the individual. *Id.* at 36. She still sees the friend that she lived with at the time of the DWI, but they do not attend parties together.

Her parents first found out about her drinking after the citation, and they were upset, according to the individual. *Id.* at 26. She now spends weekends socializing with friends who do not drink and with her family. *Id.* The individual attends counseling weekly. Her family and her counselor are her support system, and she does not drink even when others do. She has no intention to use alcohol again. *Id.* at 31. However, her current roommate drinks alcohol. *Id.* at 31. The individual does not believe that she currently has an alcohol problem. *Id.* at 29.

2. The Individual's Family

At the hearing, the individual's mother, father and cousin testified on her behalf. Her father testified that he told his daughter not to drink until she was of legal age, because he had noticed her drinking alcohol around age 18. Tr. at 43. He has not seen her drink alcohol since her

December 2007 DWI. They spend time together on weekends, and he believes that she is on the right track now. *Id.* at 46-47. He attributed her previous drinking to peer pressure. *Id.* at 49. The individual's mother testified that the individual had informed her of the underage drinking incident, and the mother warned her daughter not to associate with a certain person. *Id.* at 66. The individual no longer associates with that person. She has only seen her daughter intoxicated once. *Id.* at 67. The mother warned her daughter to stop drinking and she believes that her daughter stopped drinking after the December 2007 DWI arrest. *Id.* at 69.

The individual's cousin sees the individual every couple of weeks, and they go out to dinner and the movies. Tr. at 52. Two months prior to the hearing, they went out to dinner, and each had a beer; however, the individual only drank half of her beer. *Id.* at 55. The individual told her cousin that she was uncomfortable at the bar. *Id.* at 55. She has visited the individual's home in the last few months, but has not seen any alcohol in the individual's house. *Id.* at 55. She testified that the individual is stressed about her DWI and what has happened since. The cousin testified that she considers the individual to be a truthful person. However, she believes that the individual's friends are not a good influence on her, and one friend in particular has a drinking problem. *Id.* at 61-62.

3. The Alcohol Counselor

The individual's alcohol counselor is a licensed addiction therapist. Tr. at 83. The counselor testified that the individual came to her by court order in August 2008, and that they had seven sessions since then. Tr. at 75-76. She considers the individual to be stable, abstinent, and no longer in need of counseling. *Id.* at 78. She concluded that the individual's participation is sufficient for rehabilitation or reformation of the behavior that led to court intervention. *Id.* at 80. The individual is honest, compliant, and has a good attitude. The counselor did not make a diagnosis of any psychiatric condition. She did not ask the individual to attend AA because the individual does not have an "ongoing lifestyle" of heavy drinking. *Id.* at 86. When informed that the individual took a drink two months prior to the hearing, the counselor did not consider this a problem or a relapse. *Id.* at 93.

4. The DOE Psychiatrist

The DOE psychiatrist was present during the entire proceeding and testified at the end of the hearing. He first evaluated the individual in June 2008, using her personnel security file and a personal interview. *See Report.* He administered laboratory tests, and the results found no excessive drinking. Tr. at 100. He concluded that in late 2007, the individual was drinking to twice the legal limit on weekends, and had experienced three alcohol-related legal problems. The psychiatrist found that intoxication affected her judgment, and was stricter than the alcohol counselor or the EAP counselor in his analysis of her problem. *Id.* at 102. Even though the individual's legal problems occurred over more than a 12 month period, he opined that: (1) the seriousness of the legal problems; (2) the number of the legal problems; and (3) the gradual increase in her alcohol consumption that caused such a high level of functional impairment were an appropriate basis for his conclusion that the individual had an alcohol abuse disorder based on the criteria set forth in the *Diagnostic and Statistical Manual of the American Psychiatric Association, IVth Edition TR (DSM-IV TR)*. *Id.* at 100-104. He concluded that the individual

required one year of treatment and sobriety, starting from December 2007, so that she could move from early to sustained remission of alcohol abuse. *Id.* at 106-8.

During the hearing, the psychiatrist heard new evidence and made additional findings that caused him to reevaluate the individual. *Id.* at 109. The psychiatrist testified that the new information he gathered at the hearing was mostly unfavorable. For example, he was concerned by the following: (1) testimony that the individual lives with a roommate who drinks, even though she had moved in with her parents the prior year in order to escape the drinking of her previous roommate; (2) statements by the individual that she does not think that she has an alcohol problem; and (3) testimony of the individual's cousin that the individual drank alcohol in a bar two months prior to the hearing, a violation of the terms of her probation. He argued that the individual runs the risk of increasing her drinking if she continues to go out socially as she did with her cousin. The psychiatrist found that although the individual is making progress, she does not show adequate evidence of rehabilitation or reformation. *Id.* at 112. He opined that after completing one year of treatment and sobriety the individual will demonstrate adequate evidence of rehabilitation and reformation. That year will end in October 2009, 12 months after her last alcohol consumption. *Id.* at 116.

D. Evidence of Rehabilitation and Reformation

The mental health professionals differ in their opinions on whether or not the individual has shown adequate evidence of rehabilitation or reformation from alcohol abuse. The alcohol counselor never diagnosed the individual with alcohol abuse, or any other disorder. She considered the individual to be rehabilitated or reformed from the behavior that brought her to court intervention. Despite the individual's consumption of alcohol two months prior to the hearing and in violation of her probation, the counselor did not consider this a problem. The DOE psychiatrist, on the other hand, was concerned by the individual's recent alcohol consumption and the fact that it occurred in a social setting. Based on that information, admitted by the individual herself, the DOE psychiatrist concluded that the individual did not present adequate evidence of rehabilitation or reformation. The psychiatrist argued that there is an unacceptable risk of relapse if the individual does not complete one full year of treatment and sobriety, given her alcohol-related legal problems and her admitted contravention of the terms of her probation.

Based on testimony and evidence at the hearing, I find that the individual is making good progress in her alcohol treatment. Specifically, she is attending counseling, has a good rapport with her counselor, and has not had a drink since October 2008. She seems to now understand the problems that her alcohol consumption has caused. However, I agree with the conclusion of the DOE psychiatrist--that the individual has not yet shown adequate evidence of rehabilitation or reformation--for the following reasons. First, the individual was well aware that her probation prohibited alcohol consumption and also did not allow her to be present in a bar until June 2009. Despite these conditions, she went to a bar with her cousin in October 2008 and had a beer. Second, the individual attempted to explain her lapse by saying that she "forgot about the drink because she only drank half of it." Tr. at 120. She also explained that her counselor told her it was alright to drink in moderation. *Id.* at 121. These statements demonstrate the individual's denial of the depth of her alcohol problem. Even if her counselor said a drink was acceptable,

the individual was still bound by the conditions of her probation, which forbade the consumption of alcohol. *Id.* at 124. I also agree with the DOE psychiatrist that the individual needs to complete 12 months of sobriety to demonstrate that she can avoid the triggers in social situations that have caused her to have alcohol-related legal problems. Therefore, based on a review of the record, I agree with the DOE psychiatrist that the individual has not demonstrated adequate evidence of rehabilitation or reformation from alcohol abuse until she completes one year of sobriety and counseling in October 2009.

IV. Conclusion

In view of the unresolved Criterion J concerns, and the record before me, I cannot find that granting the individual's access authorization would not endanger the common defense and security and would be consistent with the national interest. Accordingly, I find that the individual's access authorization should not be granted at this time. Any party may seek review of this Decision by an Appeal Panel under the procedures set forth at 10 C.F.R. § 710.28.

Valerie Vance Adeyeye
Hearing Officer
Office of Hearings and Appeals

Date: February 20, 2009